IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

- - -

UNITED STATES OF AMERICA, Plaintiff, vs. ANTHONY ROBINSON, Defendant.

: 2:13-cr-00232-BMS-1
: Phildelphia, PA
:
: September 2, 2014
: 10:01 a.m.

TRANSCRIPT OF MOTION TO SUPPRESS HEARING
BEFORE THE HONORABLE BERLE M. SCHILLER
UNITED STATES DISTRICT JUDGE

APPEARANCES:

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E X H I B I T S

GOVERNMENT'S NUMBER	DESCRIPTION	MARKED	ADMITTED
1	Photo array	*	60
2	Photograph of Mr. Robinson at cash register of Subway	*	60
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DEFENDANT'S NUMBER	DESCRIPTION	MARKED	ADMITTED
1	Map	*	--
2	7548A	76	--
3	752229	77	--

- - -

(* Not marked on record.)

- - -

ESR OPERATOR: All rise.

THE COURT: Good morning.

MULTIPLE SPEAKERS: Good morning, Your Honor.

THE COURT: This is United States versus Robinson, Criminal Number 13-232.

Do you want to swear in the defendant, please.

ESR OPERATOR: Please raise your right hand.

- - -

(DEFENDANT, SWORN.)

- - -

THE COURT: Counsel, identify yourselves for the record.

MS. LINEHAN: Good morning, Your Honor. Jeanine Linehan for the United States. And with me at counsel table is FBI Agent Joseph Carpenter.

AGENT CARPENTER: Good morning, Your Honor.

THE COURT: Hello.

MS. SCOTT: Good morning, Your Honor. Kai Scott from the Federal Defender's office on behalf of Mr. Robinson.

MS. MacEOIN: Good morning, Your Honor. Nancy MacEoin with the Federal Defender's office, also on behalf of Mr. Robinson.

THE COURT: All right. Please be seated.

I understand that this is a suppression hearing, and I have read the paperwork.

So you filed the motion, Ms. Scott, so --

MS. SCOTT: I did, Your Honor.

Your Honor, we filed the motion to suppress the physical evidence in this matter and, also, the identification made by certain witnesses in this matter, the victim in the 12-01, 2012 robbery of the Subway store as well as Mr. Logan, who is a victim in the second robbery also on that same date.

The premise for our motion, Your Honor, is that the police officers on 12-02, 2012 had no reasonable suspicion or probable cause to stop Mr. Robinson or make an arrest of him and that the subsequent identification of Mr. Robinson by the first victim, Ms. Headen, was tainted by the nature of Mr. Robinson's stop and that any physical evidence taken from him, namely, his shirt -- or the shirt that the police officers allege were -- was on him as well as the sneakers that the police officers allege Mr. Robinson wore that day, were the fruit of an illegal stop and arrest.

THE COURT: All right. Let me hear from you.

MS. LINEHAN: Well, Your Honor, this basically comes down to a victim who makes a cold ID of the person that robbed her the night before as she sees him walking down the street in North Philly.

Now, granted, the Subway shop was not in North Philadelphia. This is a different section of the city. But she immediately calls the detective with the contact information he had given her the previous night and said, the man that robbed me is walking down the street.

She then follows him in the car that she's traveling in and simultaneously relays the information related to the car that he got into and was a passenger of.

She follows him until the detective is able to locate officers that are close to where this black Escalade is, and they stop the car. She confirms the identification.

It's the government's position they could have right then and there arrested the defendant based on her very certain identification of the man that had robbed her Subway store at gunpoint the night before.

The step that they took in doing a show-up to confirm the identification was how they proceeded cautiously with this victim, but she'll testify today, Your Honor, if you need her to, because she's here, that she was certain upon first glance of him as he's walking down the street that that was the man that robbed her.

She added that, oh, by the way, he's wearing the same exact clothing as what he robbed me in the night before, which led to the detective confiscating that clothing after the defendant was arrested and processed.

The only interesting part of what happens that day, Your Honor, on December 2nd, was that when the detective submitted it for prosecution with the DA's office, they declined. They said that this victim saw the defendant in a different part of the city, and without further corroboration, they weren't going to prosecute it at that time.

The detective knew that he would have corroboration. He believed that there was a surveillance video. He looked at the video. He saw that it was the defendant, the man that had been arrested the previous evening, and the defendant was subsequently rearrested for this crime.

The photo array that was shown to the victim of the Anna's Linens store, which was robbed on the same night as the Subway, was created with a computer-generated, random selection of photos, including the defendant's arrest photo, but the detective would testify that there was nothing unduly suggestive about that photo array and that the victim --

THE COURT: Well, I read the material on that issue.

MS. LINEHAN: Exactly, Your Honor.

I have four -- five witnesses here. I believe Your Honor could make a decision on this case after just hearing from the victim of the Subway store, because if Your Honor determines that her identification of this person as the person that robbed her was dead on, which I think Your Honor would, well, then, there is no fruit of the poisonous tree.

THE COURT: Bring her in.

- - -

(Pause.)

- - -

THE COURT: Good morning.

MS. HEADEN: Good morning.

- - -

(JOYANAH HEADEN, SWORN.)

- - -

ESR OPERATOR: Please state your name for the record and spell your last name, please.

THE WITNESS: Joyanah Headen, H-e-a-d-e-n.

ESR OPERATOR: Could you spell your first name.

THE WITNESS: J-o-y-a-n-a-h.

MS. LINEHAN: May I, Your Honor?

THE COURT: You may.

- - -

JOYANAH HEADEN,

having been first duly sworn, was

examined and testified as follows:

- - -

DIRECT EXAMINATION

- - -

BY MS. LINEHAN:

Q. Ms. Headen, were you employed at the Subway shop at 545 North Broad on December 12, 2012?

A. Yes, ma'am.

Q. I'd like for you to tell the judge what happened to you at approximately 5:40 that evening on December 1st.

A. A man walked in. A black male walked in, ordered a sandwich, a foot-long sandwich. I made it.

THE COURT: Was it really a foot-long?

THE WITNESS: Yes, yes, it was a foot-long.

He paid for it. After he paid for it, he asked me was I alone. I told him I was. He asked me to do him a favor and give him the money out of the drawer. So I gave him the money out of the drawer.

After I gave him the money, he asked me did I know the code to the safe. I told him no. He said, if you're lying, I will hurt you. I told him I really didn't know it and there's nothing I can do.

So he agreed. He walked to the door and said, now you can call the cops. And then he left.

BY MS. LINEHAN:

Q. Now, let me ask you this, Ms. Headen. When the man ordered the sandwich, were there any other customers in the store?

A. No.

Q. When he ordered the sandwich, how far was he from you?
A. Like, right here. Like, this counter, he was right there.
MS. LINEHAN: Okay. Let the record reflect, Your Honor, approximately two feet the victim has indicated.
BY MS. LINEHAN:
Q. And was there anything covering his face when he ordered the sandwich?
A. No.
Q. Were there any other employees of Subway working that night?
A. No.
Q. So I'm to understand correctly, it's you and the man that ordered the sandwich --
A. Correct.
Q. -- the two of you in the store?
A. Correct.
Q. Did he have anything covering his face?
A. No.
Q. Were you afraid of him when he was ordering his sandwich?
A. No.
Q. When he paid for the sandwich, were you afraid

of him?
A. No.
Q. Was he covering his face when he paid for the sandwich?
A. No.
Q. Was there anyone else in the store when he paid for the sandwich?
A. No.
Q. Did you get a good look at his face?
A. Yes.
Q. When he robbed you -- was he holding anything when he robbed up?
A. His gun.
Q. Okay. What kind of gun was it --
A. A black one.
Q. -- as far as you know?
I'm sorry?
A. It was black. I don't know what kind it was. It was black.
Q. How far was he from you when he said, do me a favor and give me the money?
A. Right at the register.
Q. You were looking at his face?
A. Yes, directly at his face.
Q. Okay. And when he said to you, if -- when --

you better not be lying, or I'm going to hurt you, what was that in relation to?

A. The safe.

Q. All right. Did you give a physical description of the person that robbed you to the police that night?

A. Yes.

Q. Did you meet with Detective Andracchio?

A. Yes.

Q. Did you give him the description?

A. Yes.

Q. Did you give him a statement --

A. Yes.

Q. -- about what had occurred?

A. Yes.

Q. Did Detective Andracchio give you his contact information?

A. Yes.

Q. Let me ask you about the next day, December 2nd, 2012.

A. Um-hmm.

Q. I want to direct your attention to approximately 3:00 p.m. on that day.

A. Um-hmm.

Q. What were you doing that caused you to contact

Detective Andracchio?

A. I was on my way to my mom's house, and my wife was going to work. And I so happened to look out the window on 10th and Wagner, and he was walking down the street.

Q. Who is "he"?

A. The guy that robbed me.

Q. Now, let me ask you, is there any person in the courtroom today that robbed you at the Subway store on December 1, 2012?

A. Yes. That man right there.

MS. LINEHAN: Let the record reflect the in-court identification of the defendant by the victim.

BY MS. LINEHAN:

Q. And you said that -- were you in a car? Because you said you looked out the window.

A. Yes, I was in the car.

Q. Who were you in the car with?

A. My wife and my driver.

Q. When you say, "a driver," was there a person driving the car?

A. Yes.

Q. Had you hired a car service?

A. No.

Q. Okay. Just someone drives you?
A. Yes.
Q. What section of the city were you in?
A. I don't know if that's Logan. I know I was on 10th and Wagner. I was leaving my house in Cheltenham.
Q. Okay. And you said you looked out the window and you saw the man that robbed you?
A. Yes.
Q. Was it this defendant?
A. Yes.
Q. And what did you do when you saw him?
A. I immediately told my wife that that's the man that robbed me, and she told me to call the detective, and she called the cops.
Q. Did you call the detective?
A. Yes.
Q. Was it Detective Andracchio?
A. Yes.
Q. What did you tell him?
A. That I see the man that robbed me walking down the street.
Q. Did you give him the person's location information?
A. Of course. Yes, I did.

Q. What was it about the man walking down the street that made you think it was the man that robbed you? What did you recognize?
A. I seen his face. I seen his face, and then I -- he had the same clothes on.
Q. Okay. Did you recognize the man that robbed you or the clothes that robbed you [sic]?
A. I recognized the man first, and then I seen the clothing.
Q. Okay. And did you tell that to Detective Andracchio?
A. Yes.
Q. Did you follow that individual?
A. Yes, I did.
Q. Where did he go?
A. He went into a store first. He was in there for about ten minutes. Then he came out and got into a car with a young lady. Don't know her, don't know what she look like. He got into a black Cadillac.
Q. Was he the passenger or the driver?
A. He was the passenger.
Q. Did you relay that information to --
A. Yes.
Q. -- Detective Andracchio?
Did you remain on the phone with the detective

the entire time that you followed --
A. The entire time.
Q. Okay. And when you were on the phone with the detective, what types of information were you giving him?
A. Where I -- well, how -- where I was following him to, the roads, the streets he was going, the -- I gave him the license plates of the car also.
Q. Okay. And did your wife contact the police via 911?
A. Yes.
Q. Okay. Now, as you're following the defendant in the car that he's traveling in, did you notice that his car was eventually stopped by police?
A. Correct.
Q. Describe that for the judge.
A. When they stopped him, they pulled him out of the car. They put the cuffs on him. I was on the phone with the detective. My wife was still trying to talk to the cops, and the cop pulled -- he came to the car and asked me if I could, you know, identify him, and I did. He took me to him, and I identified him.
Q. Did the police have their guns on --
A. No.

Q. -- the defendant when you identified him?
A. No.
Q. Was there anything that the police said or did that day to help you to identify --
A. Not at all.
Q. -- the defendant?
Did you need that second look at the defendant to say, the man that robbed me was walking down the street?
A. No.
Q. Have you ever seen the surveillance video from the Subway store of the robbery?
A. No.
Q. Have you ever seen the photos that were generated from the video?
A. No.
MS. LINEHAN: Nothing further, Your Honor.
THE COURT: Ms. Scott.
Or are you going to do it?
MS. MacEOIN: Yes.
THE COURT: Okay.

- - -

CROSS-EXAMINATION

- - -

BY MS. MacEOIN:
Q. Good morning, Ms. Headen.
A. Good morning.
Q. My name is Nancy MacEoin, and I represent Mr. Robinson. I just have a few questions for you.
A. Um-hmm.
Q. Let's start with December 1st --
A. Um-hmm.
Q. -- at the Subway. Now, was this -- do you know -- do you recall if this was the beginning or the end of your shift?
A. This was the beginning of my shift.
Q. Okay. And there was nobody else working that day?
A. No.
Q. So you're running both the cash register and --
A. Yes, ma'am.
Q. -- you're making the sandwiches; is that correct?
A. Yes, ma'am.
Q. So when this individual walked in, did anything strike you about it when he walked in?
A. No.
Q. Was it just a normal customer interaction?
A. Um-hmm.

Q. Okay. And so what really got your attention was when he said, can you hand me the money; is that correct?
A. Yes, ma'am.
Q. And -- and is that at the same time that you saw the gun?
A. Yes, ma'am.
Q. So he brings the gun out. And did he place it on the counter or --
A. No. It was in his hand. He pointed it at me.
Q. Okay. And very close, correct?
A. What do you mean by "very close"?
Q. It was --
A. He was --
Q. If he was standing --
A. -- [indiscernible] across the counter, and I was right here, and he had the gun right here. So yes --
Q. Okay.
A. -- it was close enough.
Q. And it's -- it goes without saying that you were very scared?
A. Not very scared. No, I wasn't very scared.
Q. Okay. Have you -- so you handed him the money?
A. Yes.

Q. Okay. And then when he said, get me the money from the safe, did that heighten how scared you were?
A. I mean, it made me nervous, but no.
Q. When he said he would hurt you, did that make you more nervous?
A. It made me nervous, but no.
Q. Okay. And -- so when he left, he went straight back to the door, correct?
A. He went to the door.
Q. And that's kind of behind where the customers would stand in the store, correct?
A. Correct.
Q. So he turns around and walks just a few feet to the door?
A. Correct.
Q. And the door faces Broad Street, correct?
A. Correct.
Q. So north would be to the left, and south would be to the right?
A. Correct.
Q. So do you know which way the person went?
A. No, ma'am.
Q. Okay. So you immediately just turned around and called 911?
A. Sure did.

Q. Did you hit any sort of security --
A. Yes, I did. There's a button right under the register.
Q. Did you hit that while the person was requesting the money or --
A. Yes.
Q. Okay. So you pressed it. It's a silent alarm; is that right?
A. Um-hmm.
Q. Okay. Was there a manager anywhere else in the store?
A. At the time?
Q. Yes.
A. No.
Q. So as soon as this happens, you went to call 911?
A. Yeah.
Q. And did anybody else come to the scene from Subway that --
A. Her brother, the owner's brother.
Q. The owner's brother?
A. Yes.
Q. So he must have been close by?
A. He must have been, yes.
Q. Did he arrive before or after the police?

A. After.

Q. All right. So the people to respond --

A. Was the officers.

Q. -- was the officer?

A. Um-hmm.

Q. And was this a uniformed officer?

A. Yes.

Q. Okay. Was it Detective Andracchio, or was this somebody else?

A. No, it was an officer, a regular officer.

Q. Okay. So when this officer arrived, you immediately told him what happened?

A. Um-hmm.

Q. And did you give a description?

A. Yes, ma'am.

Q. Okay. Do you remember now -- if you don't, that's fine, but do you remember the description that you gave?

A. Yes, ma'am.

Q. What was that?

A. It was a black male. He was, like, 5, 8. He had salt-and-pepper hair. He had on gray jeans, a black and gray jacket. He had some kind of writing on that. He had a skully hat and some black and white New Balances.

Q. Okay. And can I ask you this? Why you remember that description?
A. Because I was watching him the whole time he was in my store.
Q. Okay.
A. He was there alone.
Q. Was there anything that stood out about his outfit or about his height or about anything that -- that made him stand out from anybody else that you would normally serve there?
A. No. Just him.
Q. Okay. So Detective Andracchio then arrived on the scene; is that correct?
A. Did he arrive at the store?
Q. Yeah. Do you remember that?
A. Yes.
Q. Okay. And then you accompanied him to the police station?
A. To the -- correct.
Q. Was it Central Detectives; do you remember? It's okay if you don't.
A. I'm not sure.
Q. Okay. So while you're at the police station, then, you gave another statement, right?
A. Correct.

Q. And it was written out; is that correct?
A. Um-hmm.
Q. And you signed it?
A. Yes.
Q. Okay. And in there, you also gave a description, correct?
A. Yes.
Q. Okay. Now, was Detective Andracchio writing it as you were saying?
A. Yes, ma'am.
Q. Okay. And in that description, you also explained his height and his build, correct?
A. Yes.
Q. As well as a description of -- of his clothing, correct?
A. Yes.
Q. Okay. Now, I believe this was covered, but in the meantime, you had not seen any videotape?
A. No.
Q. And you still haven't seen any --
A. Nope.
Q. -- correct?
Okay. So the next day, you're in North Philadelphia --
A. Um-hmm.

Q. -- as you said, near 10th and Wagner?
A. Correct.
Q. When you -- were you just driving, and you turned to look?
A. Um-hmm.
Q. And you happened to see this person?
A. Yes, ma'am.
Q. Okay. Was he wearing a hat; do you remember?
A. Was he wearing a hat? He had the exact same thing on. He was walking with a young lady.
Q. Okay. And there was, obviously, nobody in the store the day before with this individual, correct?
A. With him?
Q. Right.
A. Correct.
Q. Okay. So you said he went into a store.
A. He went into the corner store.
Q. And at that -- did you go into the store at all?
A. No, ma'am.
Q. Okay. And you called 911?
A. Yes -- I called the detective.
Q. Okay.
A. My wife called 911.
Q. And did you -- so you explained your

location --
A. Yes.
Q. -- and the description of the person, correct?
A. Yes.
Q. And when you told Detective Andracchio the description, did you mention a physical description or just the clothing, if you recall?
A. Physical.
Q. Okay. And what was that, if you recall?
A. It was the -- I told him it was the same exact man.
Q. Okay. So you started -- you're driving on -- which direction when you first see him?
A. Towards 10th and Wagner.
Q. Okay. Towards 10th and Wagner from where; do you remember?
A. I don't know exactly which way I was coming from.
Q. Okay.
A. I was coming down Wagner.
Q. Okay. If I had a map, would that help, perhaps?
A. Probably.
Q. Okay. Let me just --
MS. MacEOIN: If I -- the Court's

indulgence, if I can step back and get a map? Thank you.

- - -

(Pause.)

- - -

MS. MacEOIN: May I approach, Your Honor?

THE COURT: Go ahead.

BY MS. MacEOIN:

Q. I'm showing you what, just for identification purposes, we marked as Defense Exhibit 1.

MS. MacEOIN: I apologize. I -- I may or may not actually enter this into exhibits, and if I do, Your Honor, we will have copies. I've showed that to the prosecutor.

THE COURT: And apologize again.

MS. MacEOIN: Thank you.

BY MS. MacEOIN:

Q. Ms. Headen, so this is -- if this is 11th and Wagner indicated with a dot, does that look correct?

A. I guess, yes.

Q. Okay. Do you recognize this? It says here, Wagner --

A. Yes.

Q. Okay. And so what -- do you remember what

direction your car was coming from?
A. This way. I think I was coming this way.
Q. So kind of north on Wagner?
A. And he was walking this way. Because I was going this way, and he was walking that way.
And I so happened to look out the window this way --
THE COURT: You have to be a little more precise, because all I'm going to be able to read is "this way" and "that way."
THE WITNESS: Oh.
BY MS. MacEOIN:
Q. Were you going north on Wagner in the car?
A. I don't know if I'm going north or south. I know I was coming towards 10th and Wagner. And he was walking by off of 10th and Wagner, and I looked outside and seen the man.
I looked over to my wife and said, babe, that's the man who robbed me. She said to me, are you sure? I said, yes, it looks just like him, and he has on the same exact clothes. She said, call the detective. I said, okay. She called the cops. That's exactly how it went.
Q. So you indicated that you looked to your left to see him.

A. Yes, ma'am.
Q. Okay. So that's the direction out of the car you were looking?
A. Yes, ma'am.
Q. Okay. And then you waited outside the store. What direction did he leave the store, if you recall?
A. He just walked -- he came out of the store, and he walked that way.
THE COURT: What's "that way"?
THE WITNESS: I don't -- he came out -- the store is this way. He walked to the right.
BY MS. MacEOIN:
Q. So he would have walked down -- down Wagner? South on 10th or south on Wagner?
A. I was not -- ma'am, I wasn't --
Q. Okay.
A. -- paying attention to the street signs. I couldn't tell you left, right --
Q. Okay.
A. -- east, west.
Q. Now, at one point, he got in a car?
A. Yes, he got in a car.
Q. Okay. Do you recall where the car was parked?
A. Around the corner. He walked --
Q. Do you know --

A. -- down the street, around the corner. I followed this man. He got in a black Cadillac with a young lady. They pulled off. I pulled off behind him.

Q. How --

A. And while -- the whole time, I'm talking to the detective. I don't -- I think we ended up on Duncannon somewhere.

Q. Okay. So do you recall how many blocks you followed the car, if you recall?

A. A couple. Maybe three, four.

Q. Okay. And did you ever lose sight of the vehicle?

A. No, not at all.

Q. Okay. And you said you had a driver. So you're directing --

A. Yes.

Q. -- that person?

A. Yes.

Q. Okay. And how far away were you? Was there -- were there other cars between you and the black Escalade?

A. Maybe one --

Q. Okay.

A. -- two. But I was right behind him.

Q. Do you recall if there were tinted windows on the Escalade?
A. I don't recall.
Q. Okay. Did you see the Escalade get stopped by the police officers?
A. Yes, ma'am. I was a block away from the Escalade.
Q. Okay. So you saw them pull him out of the car?
A. Yes, I did.
Q. And you saw them put him in handcuffs, correct?
A. Yes, I did.
Q. And did you see him get placed inside a police car?
A. Yes, ma'am.
Q. All right. And there were uniformed police officers with him?
A. Yes, ma'am.
Q. And marked police units -- police units with him?
A. Yes, ma'am.
Q. Okay. And -- and it's at that point that you made this identification of him?
A. Yes, ma'am.
Q. Okay. And you told -- it was one of the uniformed police officers?

A. Yes.
Q. Was Andracchio on the scene at --
A. No.
Q. -- Detective Andracchio?
MS. MacEOIN: Okay, okay. Court's indulgence?

- - -

(Pause.)

- - -

BY MS. MacEOIN:

Q. Did you see the police officers pull any weapons?
A. No.
Q. Okay.
MS. MacEOIN: Thank you. I have no further questions at this time.
THE COURT: Government?
MS. LINEHAN: Your Honor, the government believes that based on the victim's testimony, the officers certainly had reasonable suspicion to stop the car and detain the defendant --
THE COURT: That's your argument. Do you have any more witnesses?
MS. LINEHAN: We do, but I'm asking the court if Your Honor needs to hear from -- I have the

two arresting officers --

THE COURT: I don't need to hear from anybody.

Ms. Scott, do you want to hear from somebody?

MS. SCOTT: Yes, Your Honor.

INDISCERNIBLE SPEAKER: Auty, Police Officer Auty.

MS. LINEHAN: Your Honor, the government would call Officer Auty.

THE WITNESS: So I'm done?

THE COURT: Ma'am, you're excused.

THE WITNESS: Okay. Thank you.

THE COURT: Thank you very much.

- - -

(Witness excused.)

- - -

(Pause.)

- - -

THE COURT: Come on up.

ESR OPERATOR: Please raise your right hand.

- - -

(OFFICER TIMOTHY AUTY, SWORN.)

- - -

ESR OPERATOR: Please state your name for the record and spell your last name for me.

THE WITNESS: Police Officer Timothy Auty, A-u-t-y, badge number 7177, assigned to the 35th District.

- - -

POLICE OFFICER TIMOTHY AUTY,
having been first duly sworn, was
examined and testified as follows:

- - -

DIRECT EXAMINATION

- - -

BY MS. LINEHAN:

Q. Officer Auty, were you working as a Philadelphia police officer on December 2nd at approximately 3:00 p.m.?

A. Yes, I was.

Q. And were you on patrol in North Philadelphia?

A. Yes, I was.

Q. So were you driving a marked police car?

A. Yes, I was.

Q. Were you alone or with a partner?

A. I was solo.

Q. And did you stop a black Cadillac Escalade SUV at approximately 10th and Duncannon?

A. Yes, I did.

Q. Can you tell His Honor why you did that?

A. I received information via police radio directly from Detective Andracchio that a female complainant had just called him and said that she just observed the male who had just robbed her the previous night in the area of 10th and Windrim.

And I started to drive towards the area, and then I received more information from Detective Andracchio over the police radio that he was now -- the -- the male wanted for the pointed armed robbery was now in a black Cadillac Escalade on the 1000 -- around the area of 1000 Duncannon.

I was on 10th Street, driving southbound, and turned right onto Duncannon in the 1000 block, and I saw the black Cadillac Escalade coming at me. I immediately turned around on the vehicle and initiated a car stop.

The male was in the passenger seat. I had him exit the vehicle because I knew he was already ID'd for a pointed gun robbery. I -- I detained the male in the back of my car and relayed to my backup officer, who was talking to the -- the complainant from the robbery at -- you know, to -- to -- to look at the male. And she positively ID'd him again.

Q. Did you have your gun on the male passenger of that Escalade when the victim came up and ID'd him?
A. No, I didn't.
Q. And was the person who you had detained for the victim to see him, was he flanked by police officers?
A. No. It was just me and my backup officer on scene.
Q. And what was your backup officer doing when the victim viewed the person that's now --
A. He was --
Q. -- been identified --
A. He was standing --
Q. -- as the defendant?
A. He was standing next to her vehicle.
Q. So it's Officer Dooley [ph] next to the victim's vehicle --
A. And just me --
Q. -- and you with the --
A. -- with Mr. Robinson, yes.
Q. Did you say or do anything in the victim's presence to suggest that the person you had detained was the person who robbed her the night before?
A. No. I never even spoke to the victim.
Q. Did Officer Dooley [ph], in your presence, say or do anything to the victim to suggest to the victim

that this was the individual that robbed her?
A. No, he did not.
Q. What did you do with the defendant after the victim said, yes, that's him?
A. I -- I placed him back in the rear of my police car and transported him to 35th District headquarters for processing, which, in turn, then transported him down to Central Division because that's where he was wanted from.
Q. And had you placed him under arrest for robbery?
A. Yes, I did.
Q. How was your procedure at all altered by the fact that you had been given information that it had been a gunpoint robbery?
A. For my safety, because I knew he was -- he was wanted for a pointed gun robbery and I was initially by myself and when I pulled the vehicle over there was dark tinted windows, I initially pulled my -- my -- my weapon to make sure the scene was safe.
But after -- after I -- I observed -- I observed Mr. Robinson in the passenger seat and he showed his hands to me, I immediately holstered my weapon as he got out of the car and had him -- frisked him for my safety and then just detained him

in the back of my vehicle.
Q. When the victim saw the defendant, did you have your gun out?
A. No.
MS. LINEHAN: Nothing further.

- - -

CROSS-EXAMINATION

- - -

BY MS. MacEOIN:
Q. Good morning, Officer.
A. Good morning.
Q. I'm Nancy MacEoin. I'm one of the attorneys that represents Mr. Robinson.
So how far away from 10th and Wagner or 10th and Windrim were you when you received this call?
A. A couple blocks, six, seven blocks.
Q. Do you remember how many minutes it took you to get to the scene?
A. I don't. A couple minutes, if that.
Q. Okay. So when you saw the car, were you behind it or in front of it?
A. When I initially saw the vehicle, the vehicle was coming at me. So we were both headed opposite directions. I believe I was heading westbound, the Cadillac was heading eastbound on Duncannon Street.

Q. Okay. So did you turn on your lights and sirens to stop the car, or did you actually maneuver your car in front --
A. As soon as -- as soon as I passed the vehicle, I immediately turned around and activated my lights and sirens and pulled the vehicle over.
Q. Okay. Did you in any way use your vehicle to stop the vehicle from moving, like, for example, moving --
A. Like --
Q. -- in front of it?
A. Like, PIT it in front? No, I did not. No.
Q. So you were behind the vehicle when you stopped it?
A. Yes.
Q. Okay. And you said that you stopped it because it was a black Escalade, correct?
A. Because I received information directly from Detective Andracchio that a male wanted for a pointed gun robbery -- he was already ID'd -- was driving in a black Cadillac Escalade. And he provided me the actual tag information, too, and the tag information matched up with the tag he gave.
Q. Okay. Did you verify the tag information before you turned on your lights and sirens?

A. When I saw it physically -- he had already said it on the radio -- I knew that it matched up. So yes.

Q. Okay. So that was when you were first coming at it, correct?

A. No, when I was behind it. I can't see a tag when I'm going at a vehicle.

Q. Okay. So were the windows tinted on the car?

A. Yes. I believe all but -- all but maybe the front two windows were. But I know that, you know, when I was behind it, the -- the windows were tinted. So yes.

Q. So when you approached, did you approach the driver or the passenger side?

A. I approached the passenger side, because as I was -- as I was driving towards the vehicle, I noticed a female was driving and the male was in the passenger side. And my information that I received was that the male was in the vehicle, wanted for a robbery. So I immediately approached the male --

Q. Okay.

A. -- on the passenger side.

Q. And, again, you had your gun out for your safety, as you testified?

A. I -- I may have initially, yes, because, like I

said, he was wanted for a pointed gun robbery. I don't know -- for my safety -- I'm initially by myself. I don't know if he has a gun on him or not.
Q. Okay. And when you approached the car, was it -- when you say you -- you had your gun out, was it pointed, or was it just your hand on it?
A. I don't recall. My hand might have been on it. It might have been out, pointed at the ground. I don't recall that I had it out.
Q. Okay. Were -- did you ever point it at the male in the car?
A. I -- I did not.
Q. And when -- you opened the door for him?
A. Yeah. I believe he showed me his hands and then he opened the door and I just guided him out. I didn't pull him out. I didn't touch the vehicle or anything. He opened it.
Q. Okay. So when he -- he came out of the vehicle. You had him standing next to it?
A. I just had -- I -- I had him place his hands on the vehicle immediately so I could pat him or frisk him for my safety because I don't know if he has a gun on him or not. Once I deemed it safe, I detained him in the back of my police car.
Q. Okay. And by "detained him," you -- you put

him in cuffs is that correct?
A. I believe I put him in cuffs and put him in --
Q. Behind or in front?
A. Because he was -- behind, because he was already ID'd for a pointed gun robbery. So --
Q. Okay. But that wasn't in your presence.
A. It was direct information I received over police radio. He was already ID'd for it, for a robbery.
Q. Okay. Just to step back a second, when you said you got the information directly from Detective Andracchio, did you receive that via dispatch, or did you actually --
A. He was actually on my police radio band talking on the radio.
Q. Okay. And did you know Detective Andracchio before this incident?
A. I don't know him personally, no.
Q. Okay. Was this perhaps one of the first times you'd worked with him?
A. Perhaps, maybe.
Q. Okay.
A. I've had numerous jobs. I don't know if he's ever been assigned to one of my jobs. But I think this was the first time that I met him personally,

yes.
Q. Okay. So when you're talking to him on the radio, he's just identified himself as Detective Andracchio?
A. Yes.
Q. Okay. So back to this -- after he's pulled out of the car and he's placed in the back of your car, how long was it until you saw the complainant's vehicle nearby?
A. Well, he wasn't pulled out of the vehicle. He stepped out of the vehicle. And it was not even a minute before the complainant ID'd him again.
Q. Okay. But was she already at the scene?
A. She was --
Q. Was that car already at the scene?
A. Yeah. She was about a block away, parked at the corner.
Q. Okay. But you didn't talk to her or have any communication with her?
A. I -- no, I did not.
Q. Okay. And was anyone else in the car besides the woman driving?
A. In the -- the Cadillac?
Q. Yes.
A. I believe there might have been another female.

I'm not a hundred percent sure.
Q. Okay.
A. I know Mr. Robinson was the only male in the car, though.
Q. Okay. Do you recall anybody crying or screaming?
A. No.
Q. Okay. So when you said it was 10th and Duncannon where he was stopped, do you recall if it was on Duncannon, which runs --
A. It was on -- it was on Duncannon. I was driving on 10th Street. I made a right onto 10th -- onto Duncannon, and that was where he was stopped, on Duncannon.
Q. So that would be between 10th and 9th Street -- or 10th and -- Warnock, actually, is the next one.
A. Yes, 10th and Warnock. Yes.
Q. And so that would be to the west of 10th Street, correct?
A. Yes, that's correct.
Q. And it would be on the north side of the street if they were going -- or I'm sorry -- on the south side of the street if they were going east?
A. Yes, that's correct.
MS. MacEOIN: Okay. At this time, I

don't have any further questions for this officer.

MS. LINEHAN: Nothing further, Your Honor.

THE COURT: All right. Thank you, Officer.

THE WITNESS: Thank you.

THE COURT: You may step down.

- - -

(Witness excused.)

- - -

MS. LINEHAN: Your Honor, the remaining issues are the -- Detective Andracchio seizing the defendant's clothing after he was arrested. The government would submit that it was evidence of a robbery and the seizure of the clothing was --

THE COURT: In plain view?

MS. LINEHAN: Correct, and incident to arrest. Detective Andracchio is here.

I also have with me today Detective Flacco, who would testify to the photo array that was done with the second victim of the other store, which was Anna's Linens.

Again, it would be the government's position that all of these things were the product of a lawful arrest, which Your Honor has just heard testimony from both the victim and the arresting officer.

THE COURT: Ms. Scott?

MS. SCOTT: Your Honor, the defense would contend that the photo array was suggestive, just by its very nature, and the -- the eight various photos were not similar enough. So I would ask that we hear --

THE COURT: Well, there's --

MS. SCOTT: -- from Detective Flacco.

THE COURT: Oh, well, you want --

Go ahead. Call him.

- - -

(Pause.)

- - -

THE COURT: By the way, Ms. Scott, while we're waiting, have you seen the videos?

MS. SCOTT: I have, Your Honor.

MS. LINEHAN: Your Honor, I actually have still photos of the videos that I've marked as exhibits to show one of the detectives. So Your Honor will have the benefit of seeing --

THE COURT: Maybe, maybe not.

MS. LINEHAN: Well --

THE COURT: It depends on who Ms. Scott

wants to call.

MS. LINEHAN: No, Your Honor. I have them. So Your Honor will see them through my presentation.

DETECTIVE FLACCO: Good morning, Your Honor.

ESR OPERATOR: Please raise your right hand.

- - -

(DETECTIVE MARK FLACCO, SWORN.)

- - -

ESR OPERATOR: Please state your name for the record and spell your last name.

THE WITNESS: Mark Flacco. F, as in Frank, l-a-c-c-o.

- - -

DETECTIVE MARK FLACCO,

having been first duly sworn, was

examined and testified as follows:

- - -

DIRECT EXAMINATION

- - -

BY MS. MacEOIN:

Q. Detective Flacco, are you a detective with the Philadelphia Police Department?

A. Yes, I am.
Q. How long have you been working as a detective, sir?
A. Detective, eight years.
Q. And if I could direct your attention to December 1, 2012, were you assigned as the lead detective in a robbery that occurred at Anna's Linens on Chelten Avenue?
A. Yes, I was.
Q. What section of the city is that in, Detective?
A. It's considered Germantown.
Q. And approximately what time did that robbery occur?
A. (No response.)
Q. Was it approximately 7:20 in the evening?
A. Yes, around 7 -- seven o'clock, 7:30.
Q. Did you obtain surveillance video from Anna's Linens that related to the robbery?
A. Yes, I did.
Q. And how did you do that?
A. The -- the store took the video off the video machine, the video machine in the store, and turned it over to me.
Q. And what did you do with it, Detective?
A. I turned it over to -- we have two detectives

that are trained, you know, in taking video and then editing it down so that we can put it on our YouTube channel where we don't have a known doer during the -- during a robbery.

The police department has its own YouTube channel -- YouTube channel. And it's posted on the web for people to look at and see and see -- if they recognize anybody, they'll call and give us a tip.

Q. And did that -- did you put the video of the robbery at Anna's Linens on that YouTube police video system?

A. Yes. Yes, it was on it.

Q. And did you, in fact -- were you contacted by one of your colleagues?

A. Yes, I was. I was contacted by Detective Andracchio from Central Detectives.

Q. And what did he tell you?

A. He told me that he had a robbery at a Subway on Spring Garden Street, a Subway restaurant, and that he believed that the male was the same -- that committed that robbery was the same male that committed my robbery.

Q. Now, in the course of your investigation, have you viewed both videos, sir?

A. Yes, I have.

Q. And, specifically, the Anna's Linens video, did you ever alter that video in any way?
A. No, I did not.
Q. Did you ever superimpose the defendant's face on that video?
A. No, I did not.
Q. And I'd like to now show you what's been marked as Government's Exhibits 2, 3, and 4, if I might.
INDISCERNIBLE SPEAKER: Can I see --
MS. LINEHAN: I made a copy for --
INDISCERNIBLE SPEAKER: May I approach, Your Honor?
May I see which ones you're going to --
MS. LINEHAN: Yeah, I'm going to give -- I have a copy for you.
INDISCERNIBLE SPEAKER: Okay.
BY MS. LINEHAN:
Q. If you could just take a moment to look at those, Detective, as I give them to counsel and His Honor.
INDISCERNIBLE SPEAKER: Thanks.
BY MS. MacEOIN:
Q. Do you recognize those still photos, Detective?
A. Yes, I do.
Q. And can you identify Government's Exhibit 2?

A. It's a still photo of -- it's the defendant at the register -- it appears to be the register at the Subway store.
Q. And what about Government's Exhibit 3?
A. It's the defendant entering the -- the store.
Q. Which store, sir?
A. It appears to be the Subway store also.
Q. No. If you could just take a second look, on Government's Exhibit 3, is that a still photo from the Anna's Linens store?
A. I'm sorry. Yes, it is from the Anna's Linens store.
Q. And does the doorways in Anna's Linens differ from the doorway in Subway? The -- the entryways of both stores.
A. I believe, that, yeah, Subway is a one -- a single door, not a double door.
Q. And do you recognize that as the entryway of Anna's Linens?
A. Yes, I do.
Q. And I apologize, Detective. You didn't have a chance to review those photos before coming in today, have you?
A. No, I did not.
Q. But you have reviewed the videos; have you not?

A. Yes, I have.
Q. And Government's Exhibit 4, what is that, sir?
A. Government -- Exhibit 4 is the defendant, again, at the counter at the Subway, and he appears to be a holding a black semiautomatic handgun in his right hand.
Q. Now, when Detective Andracchio advised you that he believed that the person that robbed Anna's Linens was the same person that robbed Subway at 5:40 on that same night, had he had the opportunity to see the Subway video -- the Subway surveillance video?
A. Detective Andracchio?
Q. Yes.
A. Yeah.
Q. Okay. And what did you do with Detective Andracchio's information, that he believed the guy that robbed his store was the same guy that robbed your store?
A. Detective Andracchio supplied me with the defendant's name. I took that name and went to our imaging system, photo imaging system, where I put -- pulled up a photo of him in our imaging system.
I then put in a similar description -- age, height, complexion, hair, facial hair -- into the imaging system, and it created a database of

similar-appearing people, in which case, I took seven others out of that group and put it into a photo array.

Q. And in the nine [sic] years that you've been a detective, how many photo arrays have you put together?

A. Several hundred.

Q. Okay. And did you do this photo array in the same manner as you had done those several hundred others?

A. Yes, I did.

Q. And I'd like to show you Government's Exhibit 1.

MS. LINEHAN: And, Your Honor, copies have been given to defense counsel.

BY MS. LINEHAN:

Q. This is the original. Do you recognize this, Detective Flacco?

A. Yes, I do.

Q. What is it?

A. This is the original --

THE COURT: Do I get one?

MS. LINEHAN: Yes, you do, Your Honor. Just give me a moment.

- - -

(Pause.)

- - -

BY MS. LINEHAN:

Q. Yes, Detective Flacco, what is Government's Exhibit 1?

A. This is the original photo array -- photo array that I showed to my victim at -- from the Anna's Linens -- Anna's Linens robbery.

Q. And did you do that approximately 10 days after the robbery, on December 11, 2012?

A. Yes, I did.

Q. And what were the circumstances in which you showed your victim, a person by the name Ezekiel Logan, that photo array?

A. I -- I went to Ezekiel's house. We stood out on the front porch. I handed him the photo array and asked him if he recognized anybody in those pictures.

Q. Prior to showing the victim that photo array, when you viewed the photo array after you created it, did you notice that there was anything suggestive about any of the photos that would have led the victim to choose anyone?

A. No.

Q. And if you would look at that photo array at the man that's in the top left block, what's

different about his shirt than the others?
A. His shirt is a -- is a light green tint. It appears to be a little bit of a check pattern in it and has a collar.
Q. And the man that's in the photo next to him, what's different about his collar than the others?
A. He appears to have a second gray-colored shirt underneath a white shirt on the top that appears to have a V-neck collar, the gray shirt.
Q. Did the victim pick either of those two individuals?
A. No, he did not.
Q. Who did the victim pick?
A. The victim picked the defendant, Tony Robinson, who is in the bottom row, second photo.
Q. And is that indicated by the circle and the date?
A. Yes, it is, and the signature of Ezekiel.
Q. Was there anything -- if you had determined prior to showing the victim -- if you had determined when you looked at that photo array that there was anything suggestive about any of the photos, would you have used it?
A. No, I would not have.
Q. And how quickly did the victim, Mr. Logan, pick

the defendant's picture in that photo array after you showed it to him?
A. 30 seconds to a minute.
Q. Did he hesitate at all?
A. No, he did not.
Q. Did you do or say anything when you showed him Government's Exhibit 1 before he picked the defendant's photo?
A. When I handed him the photo array, I asked him if he recognized anybody in -- in -- in the photo array. I didn't say anything after that. He looked at the photo array. He pointed out the defendant. And then I asked him to circle the picture and sign his name and date it.
Q. Detective Flacco, based on your investigation into the robbery -- let's just go back to December 1, 2012 -- had the victim, Mr. Logan, given a physical description of the person that robbed him?
A. Yes, he did.
Q. And what was that physical description?
A. The description is a black male, 5, 7 to 5 foot 9, an Eagles jacket and Eagles hat. He was dark complected. He had either dark gray or black sweatpants on. He had a goatee with gray hairs in it. He was in his early 40s, slim build, dark

complexion, and a black semiautomatic handgun -- or black automatic handgun.

Q. Detective Flacco, had you shown Mr. Logan the video footage of the robbery before he picked the defendant out in that photo array?

A. No, I did not. The last time I talked to Mr. Logan before I showed him the photo array -- well, I called him that morning and asked him if he would be home, but the last time I actually saw him and talked to him more than just, are you going to be home, was on December 1st, at the robbery location.

Q. So he had not had the benefit of the video or any photos that were created from the video, correct?

A. Correct.

Q. Now, when the victim was robbed at gunpoint by the defendant, how long of an opportunity did he have, according to what he told you, to see the defendant when he was robbing him?

A. He saw him for several minutes. He -- he saw him walk into the store. He walked past the area where the -- the cash registers are, the center front of the store. He walked past there, and he returned up with -- I believe it was pillows to purchase and then purchased the pillows.

Q. Okay. And that was before the robbery, sir?

A. That's correct. He purchased -- made the purchase and then announced the robbery after he made the purchase.
Q. Based on your investigation so far regarding -- and your coordination in your investigation with Detective Andracchio regarding these two robberies, can you tell His Honor, what, if any, similarities you've determined between the two of them?
A. Your Honor, I -- from observing both videos and talking with Detective Andracchio, the description of the male was -- was close. Early 40s, late 30s. Was thin build. I believe Detective Andracchio had a description of a beard that was black and gray, whereas mine was a goatee that was black and gray. A similar hat. A similar gun. I think the victim from the Subway said it was a semiautomatic weapon. My victim said it was an automatic weapon. They both said that it was a black handgun. The build was the same, 5, 8 to 5, 9, thin build.
Q. What about the phrase that the robber used when he robbed each of these stores?
A. Oh. On -- my -- my victim stated to me that he -- the defendant said that -- he made the purchase and then said, can you do me a favor; give me all the money from the cash register.

From -- what I understand from Detective Andracchio was that after he purchased the sandwich at the Subway, he made the statement, can you do me another favor and give me the money?

Q. And you've already indicated to His Honor that in both robberies, the individual that has been identified by the victim of the Subway store today as the defendant -- that he made a purchase before he committed the robberies; is that right?

A. That's correct.

MS. LINEHAN: Nothing further, Your Honor.

I would move, Your Honor, for the admission of Government's Exhibits 1 through 4.

INDISCERNIBLE SPEAKER: No objection, Your Honor.

THE COURT: All right. They're admitted.

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(Whereupon, Exhibits Government's-1 through Government's-4 were admitted into evidence.)

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CROSS-EXAMINATION

- - -

BY MS. SCOTT:

Q. Good morning, Detective Flacco.
A. Good morning, ma'am.
Q. Sir, how long have you been a detective?
A. Eight years.
Q. And in that time, you've been the lead detective on, I assume, multiple cases of robbery; is that right?
A. Yes, ma'am.
Q. And I would imagine that you've had training in how to present photo arrays; is that right?
A. That's correct.
Q. Could you tell me what parameters you put into the actual computer database you use in getting the -- the photos that you got for this photo array?
A. Okay. I -- I don't remember the exact descriptions or parameters that I put in, but it would have been an age grouping of -- because the age was given to me as early 40s, late 30s, I probably would have put in from 35 to 45 as an age.
Height description, 5 foot 7 to 5 foot 9, I probably put in 5 foot 6 to 5 foot 10 or 11. Black male.
Facial hair, yes, because that will give me both goatees and beards. I wouldn't want to pick one necessarily over the other. Plus, people's facial

hair changes. Also, hair length I would have put into the -- the [indiscernible] -- into the machine to come up with a group.

And weight, build; thin build, heavy build, over -- obese.

Q. As you sit here today, you've indicated that you would have put in those parameters. As you're putting in those parameters or while you're thinking about -- about the parameters you're going to use, do you write down specifically what you put in that? Is there any record of that?

A. Only in the record of the description given to me in the interview by the --

THE WITNESS: Excuse me, Your Honor. I've had some dental work done, and I'm having problems talking a little bit.

THE COURT: Don't lose your teeth.

THE WITNESS: I already did. [Indiscernible.] New ones will be coming soon.

I'm sorry.

From the interview with the victim, reading through the interview, that's where I take those parameters from.

BY MS. SCOTT:

Q. So am I clear in that what you're saying is,

you're taking the 48 or 49 that you have in front of you, and you're typing into a database of some sort based on the paperwork that's been completed by responding police officers or detectives?
A. My actual interview is what I would -- in this case, I used my interview of the victim. And when -- a specific question in that interview was, describe the male to me who robbed you. And I took those parameters from that description and put them into the database.
Q. It's fair to say that when you make up a photo array, you want to be as -- or have as many photos that are similar in nature as possible; is that right?
A. That's correct.
Q. So you want to have people who look very similar in terms of facial features, facial hair, hair coloring, whether hair is short, long, that sort of thing --
A. Correct.
Q. -- is that right?
And in looking at Government's Exhibit 1, is it fair to say that the way that you marked these different photos is, starting from the top left, 1 through 4 on the top and then 5 through 8 on the

bottom?
A. Correct.
Q. Could you take a look at Government's Exhibit 1?
A. Yes.
Q. In looking at Government's Exhibit 1, you would agree that the only individuals in this document that have any sort of black and silver or black and gray facial hair is photo number 2 and photo number 6; is that right?
A. No.
THE COURT: Photo number one has it.
THE WITNESS: Photo number 1, number 2, 3, 4 --
BY MS. SCOTT:
Q. You see facial hair --
A. -- 6 --
Q. -- or black and gray facial hair --
A. -- 8.
Q. -- on photo number 3 and 4?
A. Yes, ma'am.
Q. May I look at your copy?
A. Sure. I have the original. It's not a copy. So --
Q. Would it be fair to say, in looking at

Government's Exhibit Number 1, though, that the photo number 6, the one of Mr. Robinson, clearly has the most silver or black and gray hair, most gray?
A. Yes, I would say that.
Q. Would you agree that a number of the individuals in this photo, namely, photos number 1, 2, 3, 5, and 6, seem to be significantly heavier than Mr. Robinson, the man who is in photo number 6?
A. I don't -- no. I would say it's the size of the picture more so than actual weight. Plus, it's the shape of the head. I mean, sometimes it's hard to tell what somebody actually looks -- weight-wise just by the shape of the head.
Q. So you would not agree that their faces appear to be fuller than that of Mr. Robinson?
A. Well, number 5 and 6 -- or I'm sorry -- 5 and 7, the picture, I believe, looks like it's bigger, like, they're closer to the camera or whatever.
Q. When you said you spoke with --
A. Go ahead.
Q. I'm sorry. I didn't mean to cut you off.
A. No, that's okay. Go ahead.
Q. When you spoke with Mr. Logan, you spoke to him on the 1st of December; is that right?
A. That's correct.

Q. Did you take the videotape that very same day from Anna's Linens?
A. No.
Q. When did you actually take the videotape from Anna's Linens?
A. It was delivered to me the second day, on the 2nd.
Q. Who delivered that to you?
A. It would -- oh, we picked it up at the store.
Q. Okay.
A. I'm sorry.
Q. So you're not aware of whether Mr. Logan actually had an opportunity to view that video prior to the time that you picked it up?
A. No, I do not know.
Q. You indicated that you never showed him the video --
A. That's correct.
Q. -- prior to the 11th.
A. That's correct.
Q. Okay.
A. I did not.
Q. In your training as a detective as it relates to photo arrays and showing complainants either photos or videos of an individual, it's fair to say

you've been taught that the most effective way of making an identification would be to show a victim one photo at a time; isn't that right?

A. No, that is not correct.

Q. You've never been taught that?

A. No. In my training through the police department, we were instructed to do a photo array in this sort of --

It has become -- lately, certain detectives, some detectives, have been doing single photo -- 8-and-a-half-by-11 single photos and showing people individually that.

At the time of this, I don't know of anybody in my division that was doing that.

Q. Okay. When you say, lately, people have been doing that, when would you say that started?

A. Last six to eight months, I've seen some of our detectives start doing some of those.

Q. And do you understand the reason to be that it's more effective in having victims make an identification that's not suggestive?

A. No. My understanding would be it's a bigger picture, so it's easier to recognize. I mean, it's not necessarily -- it's -- it's easier to look at a bigger picture than it is a smaller picture.

Q. In your training in showing -- or conducting photo arrays --
A. Um-hmm.
Q. -- you said the way that you've been taught is to do an eight-pack or a six-pack; is that right?
A. That's correct.
Q. And did you receive that training eight years ago when you became a detective?
A. Yes, ma'am.
Q. Okay. And you haven't had any subsequent training since then?
A. No, ma'am --
Q. Okay.
A. -- not in that.
Q. When you saw Mr. Logan ten days after the robbery, you said you went to his home; is that right.
A. That's correct.
Q. And you were standing out on the porch with him?
A. Yes, ma'am.
Q. Were there other individuals with you and Mr. Logan? Was there another police officer or any other individual from his family there?
A. No, there was not. It was just me and

Mr. Logan.

Q. And when you had the conversation with him about the photo array, did you indicate to Mr. Logan that there had been somebody previously arrested for a robbery similar to the one in his store?

A. No, I did not.

Q. When you spoke with Mr. Logan, did you tell him that the individual could be in the photo array that he was being shown?

A. No, I did not.

Q. So your entire conversation was, do you recognize anyone in this photo array?

A. Showed him -- showed the photo array and asked him if he recognized anybody in that photo array.

Q. And you said there was no hesitation, right?

A. That's correct.

Q. But you also indicated that it took him between 30 seconds and a minute to actually make a positive ID; is that right?

A. That's correct.

Q. And you would not -- we would both agree that's not instantaneous?

A. That's correct. But there was no hesitation on who he picked. The 30 seconds to a minute was, he actually looked at the photo array. He looked at

each individual picture.
Q. Did he say anything about the photo that he picked?
A. He said, this is the male that robbed me.
Q. Anything else?
A. That was it. I -- I -- no, as a matter of fact, I -- I conducted an after interview -- an interview after the -- I showed him the photo array and he picked out the male.
Q. Was there anything other than what you just said, though, that was indicated by Mr. Logan?
A. No.
Q. You indicated that Ms. -- excuse me -- Detective Andracchio actually contacted you about his investigation regarding the Subway robbery; is that right?
A. That's correct.
Q. When did he contact you; if you remember?
A. I believe it was either December 10th or 11th.
Q. Just prior to the time that you showed Mr. Logan the photo?
A. That's correct. As soon as I got the information, I put the photo array together and then went out to show Mr. Logan.
Q. And you indicated that Detective Andracchio

indicated that he thought it was the same person who had done both robberies?
A. That's correct.
Q. Do you know how Detective Andracchio knew about your robbery?
A. Off the YouTube -- off the You -- the police department's YouTube channel. We also watch other divisions' --
Q. Okay.
A. -- robberies to see if people are doing things in different parts of the city.
Q. So just so I'm clear about this YouTube channel, this is a YouTube channel that's available to the general public --
A. That's correct.
Q. -- and to police officers, I guess, in every detective division?
A. I go through it the same way as you would. I go onto YouTube, and you can put in Philadelphia police videos. You can put in robberies, Philadelphia, whichever, and it comes up. Usually, they're listed by DC number of the YouTube videos that the police department has created and put on their YouTube channel for anybody to look at.
Q. There were other individuals actually in Anna's

Linens at the time it was robbed; is that right?
A. There was a store manager back in the office, and I believe there was a female that had left the store just prior to the robbery but after the defendant had walked into the store.
Q. Okay. Are you aware that Mr. Logan has indicated that there was a female actually in the store at the time of the robbery, during the robbery itself?
A. I believe that she had left --
Q. Okay.
A. -- because she wasn't there when the police got there. So I believe she had left.
Q. Do you have any identifying information on who that person was?
A. No, I don't.
MS. LINEHAN: Objection, Your Honor. I would just object to any questions related to other witnesses.
THE COURT: Overruled.
Go ahead.
BY MS. SCOTT:
Q. Did you -- you said you did actually watch the video from the Subway robbery; is that right?
A. I -- I saw it much later.

Q. Was that after Mr. Logan had actually made his identification?

A. Yes.

MS. SCOTT: I have no further questions. Thank you, Detective.

THE COURT: Okay. Do you have any questions?

MS. LINEHAN: I don't, Your Honor.

THE COURT: Okay, good. Go on and step down.

THE WITNESS: Thank you, Your Honor.

THE COURT: Thank you.

- - -

(Witness excused.)

- - -

THE COURT: All right.

MS. LINEHAN: Your Honor, that would be what the government would submit to -- to make our argument, which is consistent with our pleading, that this was a lawful arrest and everything that resulted from that arrest was also lawfully done and that the photo array was not unduly suggestive, that the clothing that was recovered, that was evidence of the robbery, and we'd ask that Your Honor deny the motion to suppress.

THE COURT: All right. Ms. Scott?

INDISCERNIBLE SPEAKER: Your Honor, may I have one moment with my client?

THE COURT: Sure.

- - -

(Whereupon, the defendant conferred briefly with counsel off the record.)

- - -

MS. MacEOIN: Thank you, Your Honor.

At this time, the defense -- if we could just re-call Officer Auty very briefly? Thank you.

- - -

(Pause.)

- - -

THE COURT: All right.

MS. MacEOIN: Thank you, Your Honor. Just -- the Court's indulgence. I'm just finding one document.

- - -

(Pause.)

- - -

OFFICER TIMOTHY AUTY,

having been previously sworn, was

examined and testified as follows:

- - -

DIRECT EXAMINATION

- - -

BY MS. MacEOIN:

Q. Hello again --

A. Hello.

Q. -- Officer Auty. I just have a couple of questions.

When you stopped the defendant and after he was identified, as you testified to previously, did you complete any police paperwork?

A. Yes, I did.

Q. Okay. And which one -- would that be a 75229?

A. 7548A and a 75229, yes.

Q. Okay. And you signed both these documents, correct?

A. Yes, I did.

- - -

(Pause)

- - -

MS. MacEOIN: If I may approach, Your Honor?

THE COURT: You may.

BY MS. MacEOIN:

Q. I'm showing you what's -- what I'm about to mark as Defense Exhibit 2.

- - -

(Whereupon, Exhibit Defendant's-2 was marked for identification.)

- - -

BY MS. MacEOIN:

Q. Can you identify this document, please?

A. This is the 7548A I completed on the vehicle stop of the black Cadillac Escalade.

Q. Okay. And on there, it says on the top of the first page, if you follow with me -- this is the year that it happened, 2012, in the 35th District --

A. Yes.

Q. -- correct?

A. Um-hmm.

Q. And the first part here is for the driver of the car, correct --

A. That's correct.

Q. -- Patricia Simmons -- or excuse me -- Stevens?

A. That's correct.

Q. You describe the vehicle down here, correct?

A. That's correct.

Q. And then you describe -- on the second page, passenger number 2, you write Tony Robinson, correct?

A. That's correct.

Q. Is that the defendant?

A. Yes, it is.

Q. Can you read for the court -- you probably read your own handwriting better than me -- what you have as the description of the defendant after you had taken him out of the car?

A. Do you want me to read his Social Security number and all or --

Q. No.

A. -- just the height and weight?

Q. Just the height, the weight, and the clothing, please.

A. Okay. About 5, 10, 160, medium build, brown eyes, black hair, moustache and beard, medium complexion, no accent, and gray hat, black jacket, and blue jeans.

Q. Gray hat, black jacket, blue jeans, that's --

A. Correct.

Q. -- the extent of the clothing description, correct?

A. Yes.

Q. I'd like to show you what's going to be marked as Defense Exhibit 3, which is a copy of the 48A in this case.

- - -

(Whereupon, Exhibit Defendant's-3 was

marked for identification.)

- - -

THE WITNESS: This is the 229.

BY MS. MacEOIN:

Q. Oh, I'm sorry.

A. Okay.

Q. 229, you're correct, a copy of the 229. So you also completed this, correct?

A. Yes, although that's not my handwriting.

Q. Okay.

A. I believe the -- for the male to be transported from the 35th to Central, the wagon drove him down. So the wagon might have filled that portion out. That's obviously my handwriting, but that's not mine. I might not have filled in the description.

Q. So when you said, "That's obviously my handwriting," you're talking about the top --

A. Yes.

Q. -- three lines --

A. Yes.

Q. -- correct --

A. That's correct.

Q. -- where you have the date, you have Tony Robinson's name, and then you have his height and weight --

A. Yes.
Q. -- correct?
Medium build, skinny, that's all your handwriting, correct?
A. That's correct.
Q. So then, starting about halfway down the page with number --
A. The Social Security, that's --
Q. -- the Social Security number, the place -- excuse me -- the place of birth, that is not your handwriting, those next five lines, correct?
A. That's not my handwriting.
Q. So this is completed by somebody --
A. Most likely, the wagon that would have transported him from 35th to Central Detectives.
Q. Do you know who that is?
A. I don't know who the wagon was that day. I do not know.
Q. Okay. Now, you signed this report, correct, on the bottom of the second page?
A. Yes, that's correct.
Q. So you signed this while this part was blank?
A. Yes. I most likely -- probably left that blank and handed it off to the wagon. When they probably got him down there, the -- the Central detective or

the intake unit probably wanted that filled out, so they filled it out.

Q. Okay. But you're just guessing?

A. Yes, I'm just guessing.

Q. Okay. So -- and that says, black skull cap, black hoody, gray jeans, and black shoes, correct?

A. That's correct.

Q. Okay. So this -- you saw him only when he was at the 35th District, correct?

A. I saw him while he went down the block of Duncannon, when I stopped him, and then when I transported him to the 35th, yes.

Q. Okay. So when you transported him to the 35th District, did you actually escort him inside?

A. Yes.

Q. Okay. And you left him in a room with Detective Andracchio?

A. At the 35th? No. Detective Andracchio is from Central Detectives.

Q. Oh, I'm sorry.

A. I work in the 35th, so I immediately took him to the 35th District headquarters. And because the robbery happened at Central Detectives, he had to be transported down there. So at that point, because of the long drive, a two-person car has to transport him

down there. So the wagon took him.
Q. So how long did you have him at the 35th District?
A. Only about 10, 15 minutes.
Q. Okay. Did you ask him any questions?
A. No, I did not.
Q. Did you take --
A. Just the intake paperwork, like, the medical checklist and that stuff. I didn't ask him any questions pertaining to anything other than that.
Q. Okay. So when you filled out Defense Exhibit 2, which is the 220 -- I'm sorry, I'm sorry -- the 48A --
A. Yes.
Q. -- your description of his clothing was based on what you were visually seeing at the time that you arrested him, correct --
A. Yes, that's correct.
Q. -- that he was wearing?
A. Yes.
Q. So when you had him transferred to the Central Detectives, why did you leave that blank?
A. I don't recall why. Maybe I was in a rush to get down there because it was the end of my shift. I don't recall why I left it blank. This is back in

2012. I don't [indiscernible].
Q. Okay. Is it normal procedure for an officer to complete somebody else's paperwork?
A. If somebody leaves something out, yeah.
Q. Okay. Even though that -- the second officer is not signing it or taking responsibility for how he filled out the form?
A. Yeah, it's just a description of clothing. Yeah, it -- it happens. Yes, it has happened.
Q. Okay. Is there any way that you could find out who the transporting officer was that day?
A. You could pull the assignment sheets.
Q. Okay. Now, you, yourself, in your -- in your experience, when you've transported officers -- or excuse me -- defendants or suspects, have you routinely completed paperwork for other officers?
A. I have not routinely, but if you get them to a secure holding facility and they leave out something that their processing unit wants, you can just fill it in, yeah, because it's just clothing. It's not any, you know, pertinent information to what somebody else saw or viewed.
Q. It's just clothing?
A. Yeah.
MS. MacEOIN: Okay. Your Honor, at this

time, I don't have any further questions.

MS. LINEHAN: Just one, Your Honor.

- - -

CROSS-EXAMINATION

- - -

BY MS. LINEHAN:

Q. I'd like to show you what's been marked as Government's Exhibit Number 5, Officer Auty.

A. Yes.

Q. Is this the black hoody that you arrested the defendant in?

A. Yes, it was.

MS. LINEHAN: Your Honor, if I could pass that up to Your Honor? I don't have additional copies.

THE COURT: That's all right.

MS. LINEHAN: I'd ask Your Honor to compare it to the other government's exhibits that show the defendant robbing the Subway store in what appears to be that sweatshirt.

- - -

(Pause)

- - -

MS. LINEHAN: I have no further questions for the officer.

BY MS. MacEOIN:

Q. Officer --

MS. MacEOIN: Or excuse me. I just have one more follow-up.

THE COURT: Go ahead.

- - -

REDIRECT EXAMINATION

- - -

BY MS. MacEOIN:

Q. This white lettering on the -- on the front of the -- of the sweatshirt that you've just seen a picture of --

A. The hooded jacket, yes.

Q. Okay. You're saying he was wearing that when he was arrested on 10th and Duncannon?

A. Yes.

Q. Okay. Did that stand to you at all?

A. No.

Q. Okay. When you wrote out the description of what he was wearing, you didn't write down that it was a black sweatshirt with white letters on it, correct?

A. No, I did not.

Q. And, in fact, after he was transported, apparently, the other officer did not write that down. In fact, he wrote down what appears to be a slightly different description.

A. I can't speak for what the other officer wrote. Sorry.

Q. Even though it was your paperwork? Okay.

MS. MacEOIN: Thank you. I have no further questions.

THE COURT: All right. You may step down again.

THE WITNESS: Thank you.

- - -

(Witness excused.)

- - -

THE COURT: Any more argument?

MS. MacEOIN: Yes, I have argument, Your Honor. Thank you, Your Honor.

In addition to the -- what's been submitted in the written briefs, I just want to bring a couple of things to Your Honor's attention from the evidence that you've heard today.

I think we start with a Fourth Amendment violation. Now, Officer Auty explained that he pulled the car over because it matched what he believed came over police radio -- or from whom he had identified himself as Detective Andracchio.

He didn't have a "Wanted" flier. He didn't have any sort of arrest warrant or anything that is in, for example, the case law cited by the government in their brief.

In nearly all of those cases, there is an actual arrest warrant or some sort of "Wanted" poster or something for an individual description, and then they stop the car.

This is slightly different. They just have a description of a car.

THE COURT: Are you saying that whenever you have a description without a warrant you can't stop the vehicle and make an arrest?

MS. MacEOIN: Well, I'm actually submitting to the court that in this case, this stop, with the gun drawn and such, they were required to have probable cause in that the height -- the -- the way that the -- the defendant was removed from the vehicle was -- was, essentially, a full detention requiring probable cause.

THE COURT: You don't think there was a probable cause to stop this vehicle?

MS. MacEOIN: That's what we have submitted, Your Honor, and we submit in this case.

THE COURT: You still don't?

MS. MacEOIN: I will rest on both the argument in the brief and the evidence that we've heard today, Your Honor.

THE COURT: Now, given the fact that the victim of the Subway identified the defendant in a public place, on the street, and called the police to arrest him before the alleged show-up procedure happened, why should I find that it was unduly suggestive identification?

MS. MacEOIN: Well, Your Honor, I would submit and the defense would submit that --

THE COURT: You would submit it as what?

MS. MacEOIN: That, for example, Your Honor, her -- the reliability of her identification, I think, goes back to the actual incident, and we do have, you know, a situation where there was a weapon involved. She was scared.

And so, therefore, perhaps identifying somebody the next day based on -- on a general description or based on generally the -- the clothing, I think, is -- can be called into question.

But I will rest on what you have heard here in court and your -- your view on the testimony of the complainant witness.

THE COURT: All right.

MS. MacEOIN: And then, just briefly, going forward, you know, the clothing and the picture taken after his arrest go back to the Fourth Amendment violation as fruits.

And we move on to the Fifth Amendment --

THE COURT: Let me ask you a question.

MS. SCOTT: Correct.

THE COURT: You have the clothing that he was wearing when he was arrested --

MS. MacEOIN: Yes.

THE COURT: -- and you have the video of the clothing he was wearing. What is your argument?

MS. MacEOIN: Well, Your Honor, we're not to the video yet at this point. What we're basing is just the Fourth Amendment violation that occurred at 10th and Duncannon. That's our -- that's where we're maintaining. We're not getting into the video. The reliability of the witnesses' identifications in court is a separate issue.

So just moving on to the photo array, Your Honor, again, we -- we bring up the inconsistencies between the photos. There's noticeably some lighter, some darker, some difference in -- in -- in some -- what appears to be the build of the person, and that should all be considered when viewing whether the photo array is suggestive.

THE COURT: Of course it should be considered.

MS. MacEOIN: And we make --

THE COURT: It will be considered.

MS. MacEOIN: Great. So with that, the flowing of -- from the Fourth Amendment violation, the Fifth Amendment violation, in the last part of our written motion, we just move to suppress any in-court IDs based on those out-of-court, unreliable, suggestive identifications.

And with that, Your Honor, the defense -- the defense rests their argument. Thank you.

THE COURT: Okay. Do you have anything to add?

MS. LINEHAN: Nothing further, Your Honor. I think the testimony speaks for itself.

THE COURT: All right. You'll get a written opinion on this, because there is so many issues involved, and you'll have it next week. All right?

MS. MacEOIN: Thank you, Your Honor?

THE DEFENDANT: I wanted to take the stand. I wanted to take the stand.

THE COURT: Well --

THE WITNESS: I wanted to take -- I asked -- I kept asking --

THE COURT: Sir --

THE DEFENDANT: -- to take the stand.

THE COURT: Sir, you -- you are represented by counsel.

THE DEFENDANT: But I wanted to take the stand.

THE COURT: All right. Thank you. We're adjourned.

THE DEFENDANT: So I don't have a right to take the stand?

THE COURT: Talk to your lawyers.

THE DEFENDANT: Well, I have a motion -- I have a motion to file.

[Indiscernible], can you file it with the court, please? Right here.

INDISCERNIBLE SPEAKER: I'll file it and [indiscernible].

INDISCERNIBLE SPEAKER: We'll file it.

THE DEFENDANT: That's for the prosecutor, and this is for the Honor.

THE COURT: You're going to file this on behalf of your client?

MS. SCOTT: I will, Your Honor. It's a notice that Mr. Robinson wishes to proceed pro se.

THE COURT: He wants to proceed pro se?

MS. SCOTT: Yes, Your Honor.

THE DEFENDANT: It's the only way I can take the stand. I -- I -- I can't defend myself. There's no way I can defend myself. Everybody just wants me to be quiet.

The number one thing you said -- and I told them that you was going to say that -- was a description of that hoody. I kept telling them, I didn't have it on. The police paperwork --

THE COURT: Guess what?

THE DEFENDANT: -- proves I didn't have --

THE COURT: I -- we just concluded a hearing, and I have a motion in front of me, which I will rule on, and then you can go from there.

THE DEFENDANT: But they didn't present the argument, Your Honor.

THE COURT: Okay. Thank you. We're adjourned.

- - -

(Whereupon, the proceeding was concluded at 11:13 a.m.)

C E R T I F I C A T I O N

I, Judi Y. Olsen, do hereby certify that the foregoing is a true and correct transcript from the electronic sound recordings of the proceedings in the above-captioned matter.

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